

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.22.1308,)	ON PROPOSED AMENDMENT
plugging and restoration bond, and ARM)	
36.22.1408, financial responsibility)	

To: All Concerned Persons

1. On February 15, 2007, the Board of Oil and Gas Conservation will hold a public hearing at 8:00 a.m. at the Petroleum Club Conference Room, Crowne Plaza Hotel, 22nd Floor, 27 North 27th Street, Billings, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 31, 2007, to advise us of the nature of the accommodation that you need. Please contact Terri Perrigo, Board of Oil and Gas Conservation, 1625 11th Ave, Helena, MT 59620; telephone (406) 444-6675; fax (406) 444-2453; or e-mail to tperrigo@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

36.22.1308 PLUGGING AND RESTORATION BOND (1) Except as otherwise provided in these rules, the following bonds are required for wells within the board's jurisdiction:

(a) The owner or operator of a single well to be drilled or of a single existing oil, gas, or class II injection well to be acquired, must provide a one well bond:

(i) in the sum of \$1500, where the permitted total depth of a drilling well, or the actual, or plugged-back, total depth of an existing well, is 2000 feet or less; or

(ii) in the sum of \$5000, where the permitted total depth of drilling well, or the actual, or plugged-back, total depth of an existing well, is greater than 2000 feet and less than 3501 feet; or

(iii) in the sum of \$10,000 where the permitted total depth of a drilling well, or the actual, or plugged-back, total depth of an existing well, is 3501 feet or more.

(b) The owner or operator of multiple wells to be drilled, of existing wells to be acquired, or any combination thereof, must provide a multiple well bond in the sum of \$50,000. A one-time consolidation of companies will not be considered an acquisition requiring a \$50,000 bond if the consolidation does not change the party or parties responsible for the ultimate plugging of the wells and the aggregate amount of the existing bonds covering wells prior to consolidation.

(c) The owner or operator of existing wells covered by a multiple well bond in an amount less than \$25,000 must provide a new bond or rider to an existing bond

to increase coverage to \$25,000. ~~An operator may request a payment schedule of equal annual bond increases over a period not exceeding five years from the effective date of these rules. Such payment schedules may be approved administratively.~~

(2) All bonds must be executed on board Form No. 3 or board Form No. 14, must be payable to the state of Montana, and must be conditioned for the performance of the duty to properly plug each dry or abandoned well, and to restore the surface of the location as required by board rules.

(3) The board may require an increase by appropriate rider of any bond from \$1500 to \$3000, \$5000 to \$10,000, or from \$10,000 to \$20,000 for a single well bond, when in the opinion of the board the factual situation warrants such an increase in order for any owner or operator to be in compliance with this rule. In addition to, or in lieu of, an increase in the bond amount as provided above, the board may limit the number of wells that may be covered by any multiple well bond.

(4) No new or additional wells shall be added or substituted to any bond existing prior to the effective date of this rule.

(5) The staff may refer approval of any proposed bond to the board for consideration at its next regularly scheduled business meeting. The staff will promptly notify the applicant of the reason(s) approval has been deferred to the board and will advise the applicant of the time and place for the business meeting. The board may approve, require modification, or reject a proposed bond.

~~(5) (6)~~ The bond referred to in this rule must be in one of the following forms:

(a) a good and sufficient surety bond secured from a bonding company licensed to do business in the state of Montana;

(b) a federally insured certificate of deposit issued and held by a Montana bank ~~or any national bank in the United States that is federally insured and has total assets greater than \$200 million;~~ or

(c) a letter of credit issued by: an FDIC-insured, Montana commercial bank.

~~(i) an FDIC-insured, Montana commercial bank; or~~

~~(ii) an out-of-state FDIC-insured, commercial bank having assets in excess of \$200 million.~~

(7) Out-of-state bank bonds previously approved by the board remain in effect.

~~(6) (8)~~ A well must remain covered by a bond, and such bond must remain in full force and effect until:

(a) the plugging and restoration of the surface of the well is approved by the board; or

(b) a new bond is filed by a successor in interest and such bond is approved by the board.

~~(7) (9)~~ A notice of intent to change operator must be filed on Form No. 20 by a proposed new owner or operator of a well within 30 days of the acquisition of the well. Said notice shall include all information required thereon and must contain the endorsement of both the transferor and the transferee. The board administrator may delay or deny any change of operator request if he determines that either the transferor or the transferee is not in substantial compliance with the board's statutes, rules, or orders. The board may require an increase in any bond up to the maximum amount specified in (3) of this rule as a condition of approval for any change of

operator request. The transferor of a well is released from the responsibility of plugging and restoring the surface of the well under board rules after the transfer is approved by the board.

~~(8)~~ (10) Where the owner of the surface of the land upon which one or more noncommercial wells have been drilled wishes to acquire a well for domestic purposes, the bond provided by the person who drilled or operated the well will be released if the surface of the location is restored as required by board rules, and if said surface owner furnishes:

(a) proof of ownership of the surface of the land on which the well is located; and

(b) for actual beneficial water uses of 35 gallons or less per minute, not to exceed ten acre-feet per year, a copy of the notice of completion of groundwater development (Water Rights Form 602) filed with the Department of Natural Resources and Conservation (DNRC); or

(c) for actual beneficial water uses of more than 35 gallons per minute, or in excess of ten acre-feet per year, a copy of the beneficial water use permit (Water Rights Bureau 600) received from the DNRC; or

(d) for a domestic gas well, a written signed inspection report from one of the board's field inspectors stating that the well is presently being beneficially used as a source of domestic natural gas; and

(e) for a domestic gas well:

(i) a federally insured certificate of deposit in the amount of \$5000 for a single well or in the amount of \$10,000 for more than one well; or

(ii) a real property bond in the amount of two times the amount of the required federally insured certificate of deposit.

~~(9)~~ (11) The real property bond required in ~~(8)~~ (10)(e)(ii) above must be:

(a) provided on board-approved form; and

(b) accompanied by a certified real property appraisal and abstract of title which evidence unencumbered owner equity in an amount equal to or greater than the amount of the bond required.

~~(40)~~ (12) A domestic well must be plugged, abandoned, and restored in accordance with ARM 36.22.1301 through 36.22.1304, 36.22.1306, 36.22.1307, and 36.22.1309, or transferred to a bonded operator in accordance with ~~(7)~~ (9) of this rule, after the well ceases to be used for domestic purposes.

AUTH: 82-11-111, MCA

IMP: 82-11-123, MCA

REASONABLE NECESSITY: The amendment of these rules by the board is reasonably necessary so as to: eliminate expired provisions; provide the board with greater oversight of bonding; and to provide greater security and efficiency in the revocation of such bonds. The language proposed to be stricken within ARM 36.22.1308(1)(c) regarding payment schedules is no longer applicable because the time period for such payment schedules has expired. The language proposed to be added in ARM 36.22.1308(5) is necessary to provide for direct board review of certain bonds which in the judgment of the staff merit such review. The language proposed to be stricken in ARM 36.22.1308(6)(b) would restrict future certificates of deposit or

letters of credit for bonding purposes to those issued by Montana banks. This provision is reasonably necessary to ensure that forfeited bond proceeds can be economically and efficiently collected by the board. Certificates of deposit and letters of credit issued by out-of-state jurisdictions increase the legal and collection costs for the board to the point that they may, as a practical matter, impair the ability of the board to utilize the proceeds from those bonds where legal disputes arise with out-of-state banks. The board has no such concerns with certificates of deposit and letters of credit issued by banks within the state of Montana.

36.22.1408 FINANCIAL RESPONSIBILITY (1) The owner or operator of any injection well outside the exterior boundaries of Indian reservations must comply with the applicable bonding requirements of ARM 36.22.1308 and this subchapter.

~~(2) Owners or operators of injection wells in compliance with the U.S. environmental protection agency (EPA) financial assurance requirements on the date primary enforcement authority is delegated to the board of oil and gas conservation must provide a bond on board Form No. 3 or Form No. 14 in an amount equal to that provided to the EPA, unless an alternative multi-well bond is approved as provided in this rule. This bond is limited to wells covered under the EPA bond. The bond may be reduced to reflect the plugging or re-completion of wells to other approved used. The reduction will be in the proportion each plugged or re-completed well represents to the total bond amount at the time the bond was initially accepted.~~

~~(3)~~ (2) Owners or operators proposing to drill or acquire additional injection wells must provide the individual well bonds described in ARM 36.22.1308(1) as appropriate for the depth of the well unless such additional well(s) are covered under a multiple well UIC bond as provided in this rule. The multiple well bond described in ARM 36.22.1308(1)(b) is not available for injection wells.

~~(4)~~ (3) Injection well operators may propose an alternative multiple well UIC bond to the board's staff. The staff will review the proposed bond and provide a recommendation for its approval, modification, or rejection by the board at its next available scheduled meeting. In support of its request for a multi-well bond the operator may provide cost estimates for plugging and restoring the surface of wells of the type and in the area to be covered by the bond, the operator's estimate of any residual or salvage value that may reduce the costs of plugging, and any other information the operator wishes to provide. In reviewing a proposed bond, the staff must consider the reasonableness of the cost estimates provided, the compliance history of the operator, the operator's history of promptly plugging unneeded wells, and the financial condition of the operator. Multiple well bonds will be in a minimum amount of \$50,000.

~~(5)~~ (4) The board may accept a letter of credit in lieu of a surety bond or certificate of deposit. A letter of credit must meet the following conditions:

(a) it must be issued by an FDIC-insured, Montana commercial bank; ~~or an out-of-state FDIC-insured commercial bank having assets in excess of \$200,000,000;~~

(b) it must be in an amount equal to the bond otherwise required;

(c) it must be for a term of not less than one year, automatically renewable for additional one year period(s), and irrevocable during its term. The bank issuing

the letter of credit must notify the board, by registered or certified mail, not less than 120 days prior to the expiration date of the letter of credit if it does not intend to renew the letter;

(d) the letter of credit will remain in the custody of the board; and

(e) the letter of credit must provide that it is immediately payable in full upon demand by the board if the person on whose behalf the letter is issued fails to properly plug each dry or abandoned well and restore the surface of the location as provided by board rules.

~~(6)~~ (5) The board may reject a letter of credit and demand other security if it has reason to doubt the solvency of the bank or to believe the obligation of the letter of credit has become impaired. The board may require a financial statement from the principal and proof of solvency of the bank at any time before or after acceptance of the letter of credit.

AUTH: 82-11-111, MCA

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127, 82-11-137, MCA

REASONABLE NECESSITY: The amendment of ARM 36.22.1408(2) is reasonably necessary so as to eliminate any reference to obsolete language related to UIC primacy issues. Similarly, the amendment of ARM 36.22.1408(4)(a), which would eliminate an owner or operator's future ability to use certificates of deposit or letters of credit from out of state banks for bonding purposes, is reasonably necessary to ensure that forfeited bond proceeds can be economically and efficiently collected by the board. Certificates of deposit and letters of credit issued by out-of-state jurisdictions increase the legal and collection costs for the board to the point that they may, as a practical matter, impair the ability of the board to utilize the proceeds from those bonds where legal disputes arise with out-of-state banks. The board has no such concerns with certificates of deposit and letters of credit issued by banks within the state of Montana.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Terri Perrigo, Board of Oil and Gas Conservation, 1625 11th Ave, Helena, Montana 59620; telephone (406) 444-6675; fax (406) 444-2453; or e-mailed to tperrigo@mt.gov, and must be received no later than 5:00 p.m. on February 22, 2007.

5. Ed Hayes, Agency Legal Services, 2535 St. John's Avenue, Billings, MT 59102 has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or a combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Terri Perrigo
TERRI PERRIGO
Executive Secretary
Board of Oil and Gas

/s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State January 16, 2007.